

West's District of Columbia Code Annotated 2001 Edition

Division II. Judiciary and Judicial Procedure

Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)

Chapter 9. Divorce, Annulment, Separation, Support, Etc. (Refs & Annos)

DC ST § 16-914

Formerly cited as DC ST 1981 § 16-914

§ 16-914. Custody of children.

Effective: March 25, 2009

[Currentness](#)

(a)(1)(A) In any proceeding between parents in which the custody of a child is raised as an issue, the best interest of the child shall be the primary consideration. The race, color, national origin, political affiliation, sex, sexual orientation, or gender identity or expression of a party, in and of itself, shall not be a conclusive consideration. The Court shall make a determination as to the legal custody and the physical custody of a child. A custody order may include:

(i) sole legal custody;

(ii) sole physical custody;

(iii) joint legal custody;

(iv) joint physical custody; or

(v) any other custody arrangement the Court may determine is in the best interest of the child.

(B) For the purposes of this paragraph, the term:

(i) "Legal custody" means legal responsibility for a child. The term "legal custody" includes the right to make decisions regarding that child's health, education, and general welfare, the right to access the child's educational, medical, psychological, dental, or other records, and the right to speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.

(ii) "Physical custody" means a child's living arrangements. The term "physical custody" includes a child's residency or visitation schedule.

(2) Unless the court determines that it is not in the best interest of the child, the court may issue an order that provides for frequent and continuing contact between each parent and the minor child or children and for the sharing of responsibilities of child-rearing and encouraging the love, affection, and contact between the minor child or children and the parents regardless of marital status. There shall be a rebuttable presumption that joint custody is in the best interest of the child or children,

except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offense as defined in [§ 16-1001\(8\)](#), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; [D.C. Official Code § 4-1301.02](#)), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; [D.C. Official Code § 4-1341.01](#)), or where parental kidnapping as defined in [D.C. Official Code section 16-1021](#) through [section 16-1026](#) has occurred. There shall be a rebuttable presumption that joint custody is not in the best interest of the child or children if a judicial officer finds by a preponderance of the evidence that an intrafamily offense as defined in [§ 16-1001\(8\)](#), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; [D.C. Official Code § 4-1301.02](#)), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; [D.C. Official Code § 4-1341.01](#)), or where parental kidnapping as defined in [D.C. Official Code section 16-1021](#) through [section 16-1026](#) has occurred.

(3) In determining the care and custody of a child, the best interest of the child shall be the primary consideration. To determine the best interest of the child, the court shall consider all relevant factors, including, but not limited to:

- (A) the wishes of the child as to his or her custodian, where practicable;
- (B) the wishes of the child's parent or parents as to the child's custody;
- (C) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest;
- (D) the child's adjustment to his or her home, school, and community;
- (E) the mental and physical health of all individuals involved;
- (F) evidence of an intrafamily offense as defined in [section 16-1001\(5\)](#);
- (G) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare;
- (H) the willingness of the parents to share custody;
- (I) the prior involvement of each parent in the child's life;
- (J) the potential disruption of the child's social and school life;
- (K) the geographic proximity of the parental homes as this relates to the practical considerations of the child's residential schedule;

(L) the demands of parental employment;

(M) the age and number of children;

(N) the sincerity of each parent's request;

(O) the parent's ability to financially support a joint custody arrangement;

(P) the impact on Temporary Assistance for Needy Families, or Program on Work, Employment, and Responsibilities, and medical assistance; and

(Q) the benefit to the parents.

(a-1) For the purposes of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

(a-2) Repealed.

(a-3)(1) A minor parent, or the parent, guardian, or other legal representative of a minor parent on the minor parent's behalf, may initiate a custody proceeding under this chapter.

(2) For the purposes of this subsection, the term "minor" means a person under 18 years of age.

(b) Notice of a custody proceeding shall be given to the child's parents, guardian, or other custodian. The court, upon a showing of good cause, may permit intervention by any interested party.

(c) In any custody proceeding under this chapter, the Court may order each parent to submit a detailed parenting plan which shall delineate each parent's position with respect to the scheduling and allocation of rights and responsibilities that will best serve the interest of the minor child or children. The parenting plan may include, but shall not be limited to, provisions for:

(1) the residence of the child or children;

(2) the financial support based on the needs of the child and the actual resources of the parent;

- (3) visitation;
 - (4) holidays, birthdays, and vacation visitation;
 - (5) transportation of the child between the residences;
 - (6) education;
 - (7) religious training, if any;
 - (8) access to the child's educational, medical, psychiatric, and dental treatment records;
 - (9) except in emergencies, the responsibility for medical, psychiatric, and dental treatment decisions;
 - (10) communication between the child and the parents; and
 - (11) the resolution of conflict, such as a recognized family counseling or mediation service, before application to the Court to resolve a conflict.
- (d) In making its custody determination, the Court:
- (1) shall consider the parenting plans submitted by the parents in evaluating the factors set forth in subsection (a)(3) of this section in fashioning a custody order;
 - (2) shall designate the parent(s) who will make the major decisions concerning the health, safety, and welfare of the child that need immediate attention; and
 - (3) may order either or both parents to attend parenting classes.
- (e) Joint custody shall not eliminate the responsibility for child support in accordance with the applicable child support guideline as set forth in [section 16-916.01](#).
- (f)(1) An award of custody may be modified or terminated upon the motion of one or both parents, or on the Court's own motion, upon a determination that there has been a substantial and material change in circumstances and that the modification or termination is in the best interest of the child.
- (2) When a motion to modify custody is filed, the burden of proof is on the party seeking a change, and the standard of proof shall be by a preponderance of the evidence.

(3) The provisions of this chapter shall apply to motions to modify or terminate any award of custody filed after April 18, 1996.

(g) The Court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney, or both, to represent the minor child's interests.

(h) The Court shall enter an order for any custody arrangement that is agreed to by both parents unless clear and convincing evidence indicates that the arrangement is not in the best interest of the minor child.

(i) An objection by one parent to any custody arrangement shall not be the sole basis for refusing the entry of an order that the Court determines is in the best interest of the minor child.

(j) The Court shall place on the record the specific factors and findings which justify any custody arrangement not agreed to by both parents.

Credits

(Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; Oct. 1, 1976, D.C. Law 1-87, § 17, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 109, 23 DCR 8737; [Aug. 25, 1994, D.C. Law 10-154, § 2\(b\), 41 DCR 4870](#); [Apr. 18, 1996, D.C. Law 11-112, § 2\(b\), 43 DCR 574](#); [Apr. 20, 1999, D.C. Law 12-241, § 11, 46 DCR 905](#); [Apr. 12, 2000, D.C. Law 13-91, § 142\(b\), 47 DCR 520](#); [Oct. 19, 2002, D.C. Law 14-207, § 2\(i\), 49 DCR 7827](#); [June 25, 2008, D.C. Law 17-177, § 10\(b\), 55 DCR 3696](#); [Mar. 25, 2009, D.C. Law 17-368, § 3\(a\), 56 DCR 1338](#).)

[Notes of Decisions \(128\)](#)

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DC CODE § 16-914

Current through June 3, 2013

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DC ST § 16-914.02

§ 16-914.02. Child custody and visitation rights of parents during deployment for military service.

Effective: March 14, 2012

[Currentness](#)

(a)(1) A deploying parent may file a motion with the court to request an expedited hearing for the purpose of obtaining a temporary child custody or visitation order when no court order exists as to the custody or visitation of the child of the deploying parent.

(2) A deploying parent, or a non-deploying parent where the deploying parent is currently on deployment or has received a deployment order, may file a motion with the court to request a temporary child custody or visitation order modifying the terms of an existing child custody order or visitation order.

(b)(1) Upon a motion as provided under subsection (a) of this section, the court may issue a temporary order to establish the terms for custody and visitation of the child of the deploying parent or modify the terms of an existing custody or visitation order for the child of the deploying parent to make reasonable accommodation for the deployment.

(2) A temporary order issued pursuant to this subsection shall state:

(A) That the basis of the order is the deployment of a military parent; and

(B) That the temporary order shall terminate and the permanent order shall resume within 10 days after notification of the deploying parent's ability to resume custody or visitation unless the court finds that resumption of the custody or visitation order in effect before deployment is no longer in the child's best interest.

(3) A temporary order issued pursuant to this subsection may require:

(A) The non-deploying parent to reasonably accommodate the leave schedule of the deploying parent;

(B) The non-deploying parent to facilitate opportunities for telephonic communication, electronic mail, or other electronic communication between the deploying parent and child during the deployment period; and

(C) The deploying parent to provide the non-deploying parent with timely notice of leave of absence, unless the leave schedule of the deploying parent is changed without sufficient advance notice to allow the deploying parent to give timely notice to the non-deploying parent, in which case neither the court nor the non-deploying parent shall use the untimely

notice to prevent contact between the deploying parent and the child or use the untimely notice as a basis in requesting or issuing a permanent order modifying an existing custody or visitation arrangement.

(4)(A) Upon a motion of a deploying parent, or upon motion of a family member of the deploying parent with the consent of the deploying parent, the court may issue a temporary order to delegate all or a portion of the deploying parent's visitation rights to a family member with a close and substantial relationship to the child for the duration of the deployment if in the best interest of the child; provided, that:

(i) The delegation of visitation rights or access to the child shall not create an entitlement or standing to assert separate rights to a liberty interest in the care and custody of the child for a person other than a parent; and

(ii) A delegation of visitation rights or access to the child shall not exceed the visitation time granted to the deploying parent.

(B) A temporary order delegating all or a portion of a deploying parent's visitation rights under this paragraph shall terminate by operation of law in accordance with paragraph (2)(B) of this subsection.

(C) A person to whom visitation rights have been delegated by a temporary order issued under this paragraph shall have full legal standing to enforce that temporary order.

(5) In issuing a temporary order under this subsection, the court shall ensure that the parties are advised of the possible availability of a modification of child support, and shall provide notice to the parties of how such a modification may be obtained. The court may also decide the issue of child support, in accordance with the child support guideline in [section 16-916.01](#), during the hearing on the motion for a temporary order under this section.

(6) For the purposes of this subsection, the non-deploying parent shall have the burden of proving that resumption of the permanent order is no longer in the child's best interest.

(c) The court shall not issue a permanent order modifying the terms of an existing custody or visitation order until 90 days after the termination of the deployment of a military parent. The court shall not consider the activation or deployment of a deploying parent as the sole factor in the court's decision of whether or not to grant or deny a petition for custody or visitation, and neither deployment nor the potential for future deployment of a military parent shall, by itself, be regarded as a material change in the circumstances of any existing custody or visitation order, or against the best interests of the child, for the court to issue a permanent order modifying the terms of an existing custody or visitation order.

(d) The court, in any child custody or visitation proceeding between either 2 deploying parents or a deploying parent and a non-deploying parent, shall allow any deploying parent to present testimony or evidence relevant to the custody or visitation proceedings either by affidavit or electronically when deployment precludes the personal appearance of the deploying parent.

(e) For the purposes of this section, the term:

(1) “Activation” means the extension of United States Armed Forces to active military service of the United States. Activation does not include National Guard or Reserve annual training, inactive duty, drill weekends, or active duty within the District.

(2) “Deploying parent” means a military parent who is on deployment or has received mandatory orders from military leadership to deploy with the United States Armed Forces.

(3) “Deployment” means the compliance with military orders received by any member of the United States Armed Forces for active service, including service for combat operations, contingency operations, peacekeeping operations, temporary duty, and remote tours of duty.

(4) “Military parent” means a member of the United States Armed Forces who is the parent of a minor child, including the biological, adoptive, or legal parent, whose parental rights have not been terminated or transferred to the District or another person through juvenile proceedings.

(5) “Non-deploying parent” means a parent who is not a member of the United States Armed Forces, or is a military parent who is currently neither a deploying parent nor a parent that has received an imminent deployment or activation order.

(6) “United States Armed Forces” means the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other Reserve component thereof.

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([Mar. 14, 2012, D.C. Law 19-110, § 2\(b\), 59 DCR 449.](#))

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DC CODE § 16-914.02
Current through June 3, 2013